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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Paradise Valley Construction Company
10 LLC,

11 Plaintiff,

12 v.

13 Lusso Auto LLC, et al.,

14 Defendants.

No. CV-23-02074-PHX-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-
16 matter jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).
17 Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court
18 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
19 action.”

20 Diversity jurisdiction exists when there is complete diversity of citizenship
21 between the plaintiff and the defendants and the amount in controversy exceeds \$75,000,
22 exclusive of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement
23 when “all the persons on one side of it are citizens of different states from all the persons
24 on the other side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

25 The party seeking to invoke diversity jurisdiction has the burden of
26 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
27 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992); *see* 13B Federal
28 Practice § 3611 at 521 & n. 34. “Absent unusual circumstances, a party seeking to

1 invoke diversity jurisdiction should be able to *allege affirmatively* the
 2 actual citizenship of the relevant parties.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
 3 857 (9th Cir. 2001) (emphasis added).

4 Plaintiff Paradise Valley Construction Company LLC asserts that it is “an Arizona
 5 Limited Liability Company doing business in Maricopa County, Arizona. (Doc. 1 ¶ 1.)
 6 A corporation, whether incorporated in a state of the United States or in a foreign
 7 country, is “deemed a citizen of its place of incorporation and the location of its principal
 8 place of business.” *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20
 9 F.3d 987, 990 (9th Cir. 1994). An LLC, on the other hand, “is a citizen of every state of
 10 which its owners/members are citizens.” *Johnson v. Columbia Properties Anchorage,*
 11 *LP*, 437 F.3d 894, 899 (9th Cir. 2006). Thus, to properly establish diversity jurisdiction
 12 “with respect to a limited liability company, the citizenship of all of the members must be
 13 pled.” *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th Cir. 2016).

14 Thus, Plaintiff must file an amended complaint¹ that affirmatively alleges the
 15 citizenship of each of its member, using the proper legal standard—the amended
 16 complaint must include the place of domicile for members who are natural individuals,
 17 the place of incorporation and principal place of business for members that are
 18 corporations, and, if any of the members are LLCs, the citizenship of each of the member
 19 LLC’s members must be alleged, again using the proper legal standards.

20 The amended complaint should also allege Mr. and Mrs. Rhee’s domicile. “It has
 21 long been settled that residence and citizenship [are] wholly different things within the
 22 meaning of the Constitution and the laws defining and regulating the jurisdiction of the
 23 . . . courts of the United States; and that a mere averment of residence in a particular state
 24 is not an averment of citizenship in that state for the purpose of jurisdiction.” *Steigleder*
 25 *v. McQuesten*, 198 U.S. 141, 143 (1905). “To be a citizen of a state, a natural person
 26 must first be a citizen of the United States. The natural person’s state citizenship is then

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 28 ¹ This amended complaint pursuant to court order will not affect Plaintiff’s right
 under Rule 15(a)(1) to later amend once as a matter of course, if it chooses to do so. *See,*
e.g., Ramirez v. Cty. of San Bernardino, 806 F.3d 1002, 1006-09 (9th Cir. 2015).


1 determined by her state of domicile, not her state of residence. A person's domicile is her
2 *permanent* home, where she resides with the intention to remain or to which she intends
3 to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 858-59 (9th Cir. 2001)
4 (emphasis added) (citations omitted). *See also id.* ("In this case, neither Plaintiffs'
5 complaint nor [Defendants'] notice of removal made any allegation regarding Plaintiffs'
6 state citizenship. Since the party asserting diversity jurisdiction bears the burden of
7 proof, [Defendants'] failure to specify Plaintiffs' state citizenship was fatal to
8 Defendants' assertion of diversity jurisdiction.").

9 Accordingly,

10 **IT IS ORDERED** that by November 27, 2023, Plaintiff shall file an amended
11 complaint establishing the relevant jurisdictional facts, as described in this order.

12 **IT IS FURTHER ORDERED** that if Plaintiff fails to timely file an amended
13 complaint, the Clerk of the Court shall dismiss this case, without prejudice, for lack of
14 subject matter jurisdiction.

15 Dated this 13th day of November, 2023.

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20 Dominic W. Lanza
21 United States District Judge
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